

**Probate Conservatorship Task Force
Business Meeting**

**Burbank, California
August 4, 2006**

Minutes

Task Force Members Present: Hon. Roger W. Boren (*Chair*), Hon. S. William Abel, Hon. Aviva K. Bobb, Ms. Judith Chinello, Ms. Michelle Williams Court, Hon. Don Edward Green, Hon. Donna J. Hitchens, Hon. Steven E. Jahr, Hon. Laurence Donald Kay (Ret.), Ms. Gina L. Klee, Hon. William H. Kronberger, Dr. Margaret Little, Ms. Margaret Lodise, Hon. Sandra Lynn Margulies, Hon. Douglas P. Miller, Ms. Jacquie Paige, Ms. Sandy Sanfilippo, Mr. Alan Slater, Ms. Pat Sweeten, and Mr. Alfredo Terrazas

Task Force Members Not Present: Hon. Frederick Paul Horn, Ms. Patricia L. McGinnis, Hon. Barbara J. Miller, Mr. Richard L Narver, Ms. Gloria Ochoa

Task Force Staff: Chris Patton, (*Lead*), Rod Cathcart, Christine Cleary, Douglas C. Miller, Dan Pone, and Susan Reeves

Item 1 Welcome and Introduction of Members

Justice Roger Boren, Chair, called the meeting to order and welcomed task force members. The presence of Mr. Jack Leonard of the Los Angeles Times was noted, as well as two members of the general public. Introductions were made, the agenda for the day was reviewed, and the minutes from the June 23 meeting were approved.

Item 2 September 15 Task Force Meeting

In light of pending legislation that would directly impact probate conservatorship, the task force agreed to cancel its September 15 meeting to allow the three working groups to meet individually in order to focus on preparation of the task force's preliminary report to the Judicial Council.

Item 3 Public Comments

Mr. Eric Neshanian, a local attorney, spoke briefly about the need to standardize practices in probate conservatorship cases. Los Angeles uses a Probate Attorney Review Panel that can assist conservatees. According to Mr. Neshanian, if someone is being conserved, it is unlikely they are competent or capable of hiring an attorney to represent them. Mr. Neshanian also stated

that using a Probate Attorney Panel can prevent waste of the court's time and conservatee's assets.

Ms. Peggy Lopez spoke about guardians ad litem. In her personal experience, often incompetent or incapacitated people are unable to appear in court because of family members' interference. Ms. Lopez stated that it's difficult for people to learn what's going on and secure representation. A guardian ad litem is the only way a person can find protection. She suggests mandatory ex parte applications, even if only for four-hour emergencies, and mandatory minutes which state what happened, who was present, etc. She also stated that an Ombudsman program is absolutely necessary.

Item 4 Legislative Update

Dan Pone provided a status report on the four bills currently pending in the Legislature that would impact probate conservatorship.

- [AB 1363](#) by Assemblyman Dave Jones (D-Sacramento): Seeks to ensure that conservators and guardians are held accountable through improved court oversight, primarily through increasing the frequency and scope of court investigations.
- [SB 1116](#) by Senator Jack Scott (D-Altadena): Increases court oversight of transactions related to conservatees' real estate, and encourages maintaining a conservatee in his or her personal residence by establishing notice requirements and requiring a more thorough review before placing a person in a more restrictive setting.
- [SB 1550](#) by Senator Liz Figueroa (D-Fremont): Establishes a licensing and disciplinary scheme for professional fiduciaries, who are persons that perform conservator or guardian duties for two or more persons to whom they are not related, as well as persons who act as a trustee or specified agent for more than three people or three families to whom they are not related. Also establishes the Professional Fiduciaries Bureau within the Department of Consumer Affairs.
- [SB 1716](#) by Senator Debra Bowen (D-Marina Del Rey): Prevents financial abuse and neglect of elderly and disabled conservatees and of wards by providing the court additional oversight tools, including increased access to information regarding assets and financial records, and improved oversight over conservatorships through more frequent court reviews.

These four bills are now bundled legislation with contingent enactment language (each of the bills includes a provision requiring all of the others to be signed into law for the package to be enacted). The bills are currently in their respective appropriations committees. Only two of the bills have fiscal impact for the trial courts—AB 1363 and SB 1716; SB 1116 and SB 1550 do not have new court costs associated.

The Governor does not have a position on the bills, although his staff has reportedly expressed some concerns about the licensing approach of SB 1550. There may also be some concerns about the potential fiscal impact of the bills to the state courts, which the Judicial Council estimates at somewhere between \$9 million to \$18 million a year.

The bills can either be moved along in current form, held in the appropriations committees, or be substantially amended. There is no way to predict the outcome of the bills at this time.

Item 5 Office of Court Research Draft Survey

Mr. Dag MacLeod, Manager of the AOC's Office of Court Research, and Ms. Hilary Hehman, Research Analyst, reviewed with the task force their preliminary research plan for data collection on conservatorship cases from the courts. The proposed survey seeks to collect information regarding a court's conservatorship case load, both temporary and permanent, and to profile court staff (investigators, probate examiners, probate attorneys) and their duties. Survey time period will cover the last five years. See below for some potential survey questions and data considerations:

Survey Question	Data Considerations
Number of temporary conservatorships?	Would survey all courts - courts will likely estimate these numbers.
How long are the temporary conservatorship cases, from start to finish?	May be able to use sample from Los Angeles and San Francisco studies.
Are temporary conservatorships usually issued on an emergency basis?	Cannot be determined as statute does not define "emergency".
Current staffing levels devoted to conservatorship cases?	Survey all courts – estimate and include contract staff, judicial officers, investigators, paralegals, and attorneys. Smaller courts may have people who do many of above functions.
Current resource levels devoted to conservatorship cases?	Survey all courts – tie together with previous bullet. In Los Angeles, the Probate Volunteer Panel adds substantial benefit to help reduce the court's workload.
How many cases are pending? New filings? Dispositions?	Need to clarify terminology – distinguish between filings and pending caseload; how many cases under court's control.
How do you deal with unrepresented litigants?	This is a very large issue that may need to be dealt with in pieces, and using other methods..

Mr. MacLeod also noted that they are already collecting profiles of conservators and conservatees through case-file review. The final survey document should be ready for distribution to the courts towards the end of September, with a draft report to the task force in December.

Item 6 Reports of Working Groups

Reports were made by the leads from each of the three working groups:

- a. *Model Programs and Best Practices*: Reviews innovative programs in California and around the country, and makes recommendations regarding possible models that should be adopted in California to improve the administration and oversight of conservatorship cases.

Judge William Kronberger reported the best practices working group is looking at the New Jersey reform legislation, and it doesn't appear to differ greatly from ours. They are focusing on best practices for the trial courts:

- Pre-conservatorship – temporary and ex parte
 - Establishment of conservatorships – practices and criteria
 - Review and judicial oversight
 - Termination and responsibilities of the courts
- b. *Education and Training*: Reviews existing education and training programs for judges and other probate court personnel such as examiners and investigators, and makes recommendations regarding possible changes to enhance training.

Judge William Abel reported the education working group is focusing on six items:

1. Survey what is currently offered for conservators, minimum education
2. Experience levels
3. Continuing education needs
4. Recommendations regarding investigator training models
5. Education content – should be both entry level and experienced level
6. Delivery of educational materials – video broadcasts are good, also benchguides

Currently, there is no mandatory education requirement for conservators, and no on-going training from professional organizations except for the investigators. Private Professional Conservators do have an education program offered by Cal State Fullerton.

- c. *Rules and Laws*: Reviews pending legislation, as well as current statutes, case law, rules of courts, forms and procedures, to make recommendations regarding possible reforms in these areas.

Alan Slater reported that the working group cannot make any concrete recommendations until the results of the legislation are known. They are currently studying five areas:

1. Reports and accountings
2. Role of court investigator

3. Appointment of temporary conservators
4. Role of Private Professional Fiduciaries
5. Power of conservators and restrictions of conservatees

Item 7 Interim Report to the Judicial Council

The task force will compile an Interim Report to be presented to the Judicial Council at its October meeting.

Item 8 Other Business

With no further business, the meeting was adjourned at 3:00 p.m.

Approved by the Probate Conservatorship Task Force on October 13, 2006